**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF MISSOURI**
**WESTERN DIVISION**

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| DAVID OPPENHEIMER and<br>PERFORMANCE IMPRESSIONS, LLC<br><br>Plaintiff,<br><br>v.<br><br><br>RED SAGE, INC. and<br>SHERI PARR,<br><br>Defendants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. _____<br><br><br>**JURY TRIAL DEMAND** |

## COMPLAINT

Plaintiffs David Oppenheimer ("Oppenheimer") and Performance Impressions, LLC ("Performance Impressions"), complaining against Defendants Red Sage, Inc., ("Red Sage") and Sheri Parr ("Parr") (collectively, "Defendants"), alleges and states as follows:

## NATURE OF ACTION

1. This action arises under the Copyright Act, 17 U.S.C §§ 101, *et seq*., and 17 U.S.C §§ 501, *et seq*., for infringement of copyright registered with the United States Copyright Office.

## PARTIES

2. Plaintiff Oppenheimer is a citizen of North Carolina engaged in the business of professional photography residing in Asheville, Buncombe County, North Carolina.

3. Plaintiff Performance Impressions is a limited liability company duly organized by law in the State of North Carolina with it principal place of business in Asheville, North

Carolina. Oppenheimer is the principal of Performance Impressions through which he licenses his photographs including the photograph that is the subject of this action. Oppenheimer and Performance Impressions are sometimes collectively referred to as the Plaintiffs.

4. Defendant Red Sage is a corporation organized and existing under the laws of the State of Missouri operating as The Brick with a principal place of business at 1727 McGee St. in Kansas City, Missouri.

5. Upon information and belief, Defendant Parr is a citizen of Missouri residing in Kansas City, Missouri, and the sole shareholder of Red Sage, and the owner/operator of The Brick.

**JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a) and 28 U.S.C. § 1391 because Defendants reside in this District, are engaged in substantial activity within this District, and because the acts complained of herein have caused harm to Plaintiff in this District.

**BACKGROUND FACTS**

8. In 2013, Oppenheimer took various photographs of concerts and events in Asheville, North Carolina. One of the photographs taken by Oppenheimer depicts musician Carly Meyers performing with a musical group known as "The Mike Dillon Band" at a venue called The Grey Eagle on February 20, 2013. A copy of this photograph (the "Meyers Photograph") is attached hereto as Exhibit A.

9. Plaintiff Oppenheimer is the author (photographer) of, and the owner and proprietor of all right, title, and interest in and to, the Meyers Photograph covered by Copyright

Registration, Number VAu 1-132-213, bearing a March 11, 2013, effective date of Registration. A copy of the Certificate of Registration is attached hereto as Exhibit B. A copy of the Meyers Photograph was deposited with the application for registration.

10. Plaintiffs have complied in all respects with Title 17 of the United States Code (Copyright Act of 1976) and all other United States laws governing copyright, and has secured the exclusive rights and privileges in and to the copyright referenced above including the subject Meyers Photograph.

11. Since the date of registration, Plaintiffs have held all the exclusive rights to the registered Meyers Photograph, including, without limitation, the rights to reproduce the work, to prepare derivative works, to distribute copies to the public, and to display the work publicly pursuant to 17 U.S.C. § 106.

12. After registration, Plaintiffs published the Meyers Photograph shown as Exhibit A on the Flickr account for Performance Impressions at

www.flickr.com/photos/livemusicphotography/8592547069

with the following copyright management information clearly visible on the watermark on the image and in the description: © 2013 David Oppenheimer. The copyright setting is also set as: © All Rights Reserved.

13. Plaintiffs' copyright referenced above are presently valid and subsisting, were valid and subsisting from the moment of creation in the year 2013, and all conditions precedent to the filing of this suit have occurred.

**INFRINGEMENT FACTS**

14. On March 26, 2014, Oppenheimer discovered that the Meyers Photograph shown as Exhibit A had been placed onto The Brick's Facebook page which was available to the public on:

https://www.facebook.com/thebrickkcmo/photos/pb.199026665700.-2207520000.1453497888./10152306784005701/?type=3&theater

and

https://scontent-atl3-1.xx.fbcdn.net/hphotos-xta1/v/t1.0-9/1924893_10152306784005701_1222969348_n.jpg?oh=dba84565a285c120e7f5813429ac6c6a&oe=57342F37.

Copies of the The Brick's Facebook infringing pages are attached hereto as Exhibits C and D.

15. When Plaintiff Oppenheimer checked his records, he determined that he had never licensed this copyright-protected Meyers Photograph to either of the Defendants. On September 1, 2016, and again in January 20, 2017, Plaintiffs' counsel contacted Defendants via Red Sage's registered agent who is Defendant Parr notifying them of the infringement and requesting them to cease and desist attached hereto as Exhibits E and F.

16. On information and belief, the inclusion of the infringing copies of the copyright-protected Meyers Photograph posted on The Brick's Facebook page was for the purpose of advertising, marketing, and/or promotion and Defendants had a financial interest in the infringing activities, and/or realized profit attributable from or through the infringing activities.

## VICARIOUS LIABILITY

17. Plaintiff hereby incorporates the preceding paragraphs as if restated verbatim.

18. Because Parr is the principal and/or manager of Red Sage, or otherwise had the right to control its activities, she had knowledge of the infringing activities, and/or had a financial interest in the infringing activities.

19. On information and belief, Parr provides decision-making in the activities of Red Sage in her role as the principle and/or manager of Red Sage, and has a direct financial interest in the infringing activity described herein.

20. The conduct of Red Sage as described above was performed and accomplished through the direction, control, and/or conduct of Parr personally, as an owner and/or manager of Red Sage. Parr had the right and ability to prevent Red Sage from infringing the protected Photograph and/or to stop the infringement once begun. Additionally, on information and belief, Parr received pecuniary benefit from Red Sage's infringement.

21. Accordingly, Parr is personally liable to Plaintiffs as a joint and/or contributory infringer, or is otherwise vicariously liable for the actions of Red Sage.

## COUNT I
## (Copyright Infringement (17 U.S.C. § 501))

22. Plaintiffs hereby incorporate the preceding paragraphs as if restated verbatim.

23. Plaintiffs own the exclusive rights to the copyrighted Meyers Photograph described above.

24. Defendants have infringed Plaintiffs' copyright in and to the above-described Meyers Photograph (shown as Exhibit A) by scanning, copying, reproducing, distributing, publishing and/or otherwise using, unauthorized copies of said photographs in violation of the Copyright Act, 17 U.S.C. § 501.

25. The above-described acts of Defendants constituted direct willful infringement of Plaintiffs' copyright in the subject photograph under 17 U.S.C. § 504(b) and (c).

26. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyright in the Photograph, Plaintiffs have suffered damages including lost profits.

27. Pursuant to 17 U.S.C. § 504(a), Plaintiffs are entitled to recover actual damages plus Defendants' profits, or statutory damages up to $150,000.

28. Pursuant to 17 U.S.C. § 505, Plaintiffs are entitled to recover the costs of this action, including reasonable attorneys' fees.

29. Plaintiffs are further entitled to declaratory relief and injunctive relief.

## CAUSATION/DAMAGES

30. As a direct and proximate result of Defendants' above-described acts of copyright infringement, Plaintiffs have sustained actual damages in an amount not yet ascertained, but which is believed to be thousands of dollars. Such actual damages include, but are not limited to, research time tracking down and documenting the infringement, lost profits and/or lost licensing revenue, disgorgement of Defendants' profits attributable to the infringement, and attorney time spent researching and corresponding with Defendants, drafting and filing this suit, and litigation of same through to jury verdict, and including any appeals.

31. Plaintiffs seek to recover statutory damages for Defendants' infringement within the provisions of the Copyright Act in a sum up to and including $150,000 for the infringement.

WHEREFORE, Plaintiffs respectfully request that they be granted relief and judgment against Defendants as follows:

(a) Issue an order that Defendants' unauthorized conduct violates Plaintiffs' rights under the Federal Copyright Act at 17 U.S.C. §101, *et seq*.;

(b) Order Defendants to account to Plaintiffs for all gains, profits, and advantages derived from the Defendants' infringement of the Meyer Photograph;

(c) Order Defendants to pay Plaintiffs all profits and damages in such amount as may be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate) for the Defendants' infringement; alternatively, maximum statutory damages in the amount of $30,000 for the infringement pursuant to 17 U.S.C. § 504 (c)(1); or such other amount as may be proper pursuant to 17 U.S.C. § 504;

(d) Award Plaintiffs maximum statutory damages in the amount of $150,000 for the infringement of the registered Meyer Photograph pursuant to 17 U.S.C. § 504 (c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 504;

(e) Order that Parr is contributorily liable for the direct infringement of Plaintiffs' registered Meyers Photograph;

(f) Order that Parr is vicariously liable for the direct infringement of Plaintiffs' registered Meyers Photograph;

(g) Order the Defendants to pay Plaintiffs their costs of litigation and reasonable attorneys' fees in this action, pursuant to 17 U.S.C. § 505;

(h) Order the Defendants to deliver to Plaintiffs all copies of the Meyers Photograph and all other materials containing such infringing copies of the Meyers Photograph in their possession, custody or control;

(i) Order the Defendants, their agents, and servants to be enjoined during the pendency of this action and permanently from infringing the copyright of Plaintiffs in any manner and from reproducing, distributing, displaying, or creating derivative works of the Meyers Photograph; and;

(j) Such other and further relief as the Court deems just and proper.

Respectfully submitted this 22nd day of March, 2017.

STEELMAN, GAUNT & HORSEFIELD

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